Supreme Court, U.S.
FILED
MAR 3 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1211

In The
Supreme Court Of The United States

October Term, 1985

Kondian R. Rajaram,

Appellant

v.

A.S. Abell Publishing Company,

Appellee

Appeal From The
Court Of Appeals Of Maryland

Appellant's Reply To Motion Of Appellee To Dismiss Or Affirm

Edward Jack Makowski, Jr.
1746 Eastern Avenue
Baltimore, Maryland 21231
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Counsel For Appellant

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Kondian R. Rajaram,

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v.

A.S. Abell Publishing Company,

Appellee

Appeal From The
Court Of Appeals Of Maryland

Appellant's Reply To Motion Of Appellee To Dismiss Or Affirm

Appellant opposes Appellee's Motion and moves the Court to dismiss Appellee's Motion due to its irrgularities, flaws and insufficiencies.

Appellant's grounds are as follows:

(1) The Appeal is within this

Court's jurisdiction because the underlying order of the Circuit Court for Baltimore City (the first order granted in the subject lawsuit) dated August 2, 1984 became final on September 1, 1984. The order confirmed the subject arbitration award. Appellee's Motion fails to address it.

(2) The Appeal is within the Court's appellate jurisdiction and does clearly warrant discretionary review under this Court's appellate and/or certiorari jurisdiction, because Appellant has come to this Court to protect not only his rights but also the rights of those Maryland citizens who currently are and/or in the future will be subjected to similar circumstances in Maryland.

(3) Appellee claims (page 2, lines 4-8, of its Motion To Dismiss or Affirm) that: "(3) any federal questions in Appellee's Jurisdictional Statement are insubstantial, were not timely

> or properly raised, and were not expressly passed on below, and the judgment rests on an adequate non-federal basis."

Appellant agrees.

(4) The seven questions presented in Appellant's Jurisdictional Statement are federal and substantial. Additionally, they are Constitutional, therefore, automatically raised in every stage of the subject lawsuit starting from May 14, 1984 for the reasons that "due process of law" is a continuous federal mandate on every State court within the territorial limits of the United States.

(5) This Appeal is public and affecting every United States citizen's Constitutional & civil rights if such citizen attempts to reside within the State of Maryland since Maryland courts have established a precedent by not protecting similar rights of this Appellant.

I

NATURE OF THE CASE

Appellant filed the subject lawsuit in the State Court on May 14, 1984. The action was properly served by Sheriff on May 17, 1984 at Appellee's principal business location (501 North Calvert Street, Baltimore, Maryland 21202).

In an affidavit by Howard K. Kurman, which was filed in the State Court, Attorney Kurman admits that he put the served action in his desk drawer and ignored it. (See Appellant's Appendices to instant Reply, pages 1a-9a; especially page 4a, paragraph 6 to page 5a, paragraph 13 & pages 7a-9a.)

Appellee's Motion fails to discuss the undisputed fact that the subject lawsuit led to a Confirmation Order of August 2, 1984 on an arbitration determination, which became a "final" judgment on September 1, 1984 under Maryland law. Appellant believes

that the judgment would not have been vacated were it not that the judge at the hearing is a former member of Appellee's representative law firm. Appellant is concerned that he was denied his due process right to a hearing by a neutral and detached body. (See Morrissey v. Brewer, 408 U.S. 471 (1972) and Marshall v. State, 291 Md. 205 (1981)). (See Appellant's Appendices to instant Reply, pages 10a-16a.)

The finality of trial court's August 2, 1984 order makes that court's subsequent entry of Default of September 11, 1984 and the subsequent order of March 12, 1985 setting aside the Default inconsequential. The obtaining of the entry of Default was a precautionary step on the part of Appellant to provide additional and further notice to the Appellee of the proceedings prior to audit.

The Court of Special Appeals of

Maryland gave no reason why it ordered, on May 23, 1985, the transcript and later decided, that no appeal was allowable as a matter of law, without its having received the transcript and record. Appellee's statement that the appeal was dismissed because "there was no final judgment" is not supported by the records of the Maryland appellate courts.

The Maryland Court of Special Appeals, on November 12, 1985, granted [under Annotated Code of Maryland, Courts & Judicial Proceedings, Section 12-303(3)(vi)] to Arundel Federal Savings and Loan Association what it denied to Appellant on June 26, 1985. (See Appellant's Appendices to his Jurisdictional Statement, pages 18a-19a & 94a-113a.) It failed to provide any opinion indicating why Appellant's indistinguishable appeal was "not allowed by law".

Appellant is aware of no evidence that can prove Maryland's highest court treated the subject lawsuit in a way different from the way the Court of Special Appeals treated it; hence, Appellant believes Maryland's highest court was as much erroneous as its subordinate appellate court. No Maryland court has given a reason why Domenico Ventresca (See Appendices to Appellant's Jurisdictional Statement, pages 26a-48a) and Arundel Federal Savings & Loan Association (See Appendices to Appellant's Jurisdictional Statement, pages 94a-113a) should be given right to immediate appeal from an "interlocutory" judgment, which sets aside a prior "final" judgment, while Appellant should not be given equal right.

Neither the Appellee nor any court of Maryland has challenged the facts: (1) that the August 2, 1984 order of the trial court confirmed the subject

arbitration award, (2) that said order, under Maryland law, became a final judgment on September 1, 1984, (3) that trial court's vacating of August 2, 1984 order on March 12, 1985 carries the finality necessary for review by the instant Court under Annotated Code of Maryland, Courts & Judicial Proceedings, Section 12-303(3)(vi).

Appellant is asking instant Court to review the decision of Judge Joseph H. H. Kaplan of Circuit Court for Baltimore City. Since no other Maryland court has reviewed Judge Kaplan's decision although it was submitted to both the Court of Special Appeals and the Court of Appeals. Such review by the instant Court has been recognized as appropriate. (See Stanford v. Texas (1965) 379 U.S. 364, 13 L. Ed. 2d 431, 85 S. Ct. 506).

As in Stanford, the order and judgment of the Circuit Court for Baltimore

City can be considered as a decision of the highest court of the State of Maryland.

II

RESPONSE TO ARGUMENT

A. In its Motion to Dismiss, Appellee is asking this Court to ignore the fact that what Appellant is appealing from is the vacating of an enrolled final judgment dated August 2, 1984, which served to confirm an arbitration award.

Appellee correctly asserts that the merits of Appellant's claims have never been considered by any Maryland appellate court; and Appellee concludes, based on that assertion, that the Appeal must be dismissed. Such an argument by Appellee implies that the courts are supposed to review the merits of binding arbitration awards, in the absence of a timely motion, prior to granting judgment on the results of arbitration. Appellee proffers neither

Federal law nor Maryland law to substantiate such a theory.

Appellant believes that a review of the record below will show that Market Street Ry. Co. v. R.R. Comm'n of California, 324 U.S. 548 (1945), at page 562, justifies instant Appeal:

> "Due process, of course, requires that commissions proceed upon matters in evidence and that parties have opportunity to subject evidence to the test of cross-examination and rebuttal."

Appellant was denied, by trial court, opportunity to subject evidence proffered by Appellee to such test. Honorable Judge Joseph H.H. Kaplan quashed subpoenas issued by Appellant in response to an ex parte request made by Appellee, and, he refused to allow any evidentiary hearing.

Appellee has not disputed the fact that the vested property interest of

Appellant was affected by Judge Kaplan's actions. Evidence in the form of four affidavits was submitted to the trial court by Appellee. Appellant issued subpoenas to affiants and Judge Kaplan refused to allow affiants to be confronted and examined by Appellant's counsel.

Trial court judge Honorable Kaplan was formerly a member of Appellee's law firm, Venable, Baetjer and Howard. Appellant requested that he recuse himself. That request was denied. (See Appellant's Appendices to his instant Reply, pages 10a-16a.)

B. The Appeal is within the instant Court's appellate jurisdiction and/or certiorari power because Appellant's rights under U.S. Constitution, Amendments 5, 10 & 14, are involved.

The entry of Default, which was the subject addressed in Motion Of Appellee,

was signed on September 11, 1984; it was unnecessary in view of the Confirmation Order made on August 2, 1984 which became final on September 1, 1984.

C. Appellee claims on page 4 of its Motion that:

> "THIS CASE DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION, ANY FEDERAL QUESTIONS IN THE JURISDICTIONAL STATEMENT WERE NOT TIMELY OR PROPERLY RAISED AND WERE NOT EXPRESSLY PASSED ON BELOW, AND THE JUDGMENT RESTS ON AN ADEQUATE NON-FEDERAL BASIS."

However, in Pleadings filed by it in courts below, Appellee repeatedly insisted that Federal Law controlled and preempted the subject lawsuit. Currently Appellee has seemingly reversed its argument. (See Appellant's Appendices to his instant Reply, pages 17a-22a.)

Appellee's assertions, that any Federal questions were not timely or properly raised and were not expressly

passed on below, are patently incorrect. Appellee argued and briefed matters, which gave rise to the issues and questions presented by Appellant for the instant Court's review, in its pleadings filed in courts below. Appellee's arguments in the courts below demonstrate Appellee's reasoning as to why instant Court has jurisdiction to accept this Appeal based on a substantial question. (See Appellant's Appendices to his instant Reply, pages 17a-22a.)

D. In its CONCLUSION, (Motion Of Appellee, page 6, line 7), Appellee admits that it has been using several attorneys.

In response to Plaintiff's Request for Admission of Facts, filed on January 11, 1985, Appellee filed, on July 29, 1985, its Defendant's Response: the following appears in regard to request No. 18:

"18. Jeffrey P. Ayres is not Abell's only attorney."

"18. Admitted."

E. Appellant's counsel did not receive any copy of the Appellee's Motion until February 21, 1986. Inspection of the four booklets revealed that none contained evidence that Motion Of Appellee was ever filed nor any date when the bookets were mailed to Appellant's counsel. Supreme Court Rule 28.5. states:

> "Whenever proof of service is required by these Rules, it must accompany or be endorsed upon the document in question at the time the document is presented to the Clerk for filing. Proof of service shall be shown by any one of the methods set forth below, ...
> (b) By a certificate of service of the document in question, reciting the facts and circumstances of service in compliance with the appropriate paragraph or paragraphs of this Rule, and signed by a member of the Bar of this Court representing the party on whose behalf such service has been made..."

Rule 28.3. states:

> "Whenever any ... motion ... is required by these Rules to be served, such service may be made personally or by mail on each party to the proceeding at or before the time of filing. ... If personal service is made, it may consist of delivery, at the office of counsel of record, to counsel or an employee therein. If service is by mail, it shall consist of depositing the document in a United States post office or mailbox, ..."

Counsel for Appellant apologizes for the rough nature of this hastily prepared Reply brief. Appellant's counsel first received notice of a certified parcel on February 19, 1986. Counsel for Appellant was in Towson, Maryland, on that date regarding a different legal matter. On February 21, 1986, counsel for Appellant went to post-office and took delivery of certified mail. That parcel was the Motion of Appellee to Dismiss or Affirm. It was seven days late from the time that

Appellee is required to send such notice to Appellant.

SUMMARY

In Motion Of Appellee To Dismiss Or Affirm:

(A) Appellee fails to address the August 2, 1984 order of the trial court.

(B) Appellee fails to address the seven questions presented for the Court's review.

(C) Appellee fails to address important and substantial questions presented in Appellant's Jurisdictional Statement.

The time available to Appellant's counsel to prepare this Reply brief was substantially reduced by an apparent breach of Supreme Court Rule No. 28 by Appellee.

CONCLUSION

Appellant had a right conferred by

a judgment of August 2, 1984. This right and the property awarded thereby were taken from him without compensation. This act serves to invalidate Federal Statute 42 U.S.C. §1983 and is repugnant to the 5th and 14th Amendments to the Constitution.

For the foregoing reasons, Motion Of Appellee To Dismiss Or Affirm should be rejected and Appellant should be granted the relief prayed for in his Jurisdictional Statement and/or he should be allowed to brief the Court and proceed in his Appeal or this Court should review the matter under its certiorari power.

Respectfully submitted,

Edward Jack Makowski Jr. 3/3/86

Edward Jack Makowski, Jr. Date
1746 Eastern Avenue
Baltimore, Maryland 21231
Telephone (301) 563-0990
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that there is only one party (the Appellee) that needs to be served with the foregoing Appellant's Reply. Moreover, I hereby certify that, on this 3rd day of March, 1986, this only party was served by mailing three copies of said Appellant's Reply, first class mail, postage prepaid, and three additional copies of said Reply, certified mail, postage prepaid, return receipt requested, to Appellee's counsel of record, at his address of APPEARANCE FORM record, i.e.,

Jeffrey Peabody Ayres, Esquire,
Venable, Baetjer & Howard
1500 Mercantile Bank & Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201

Edward Jack Makowski 3/3/86

Edward Jack Makowski, Jr. (Date signed)
1746 Eastern Avenue
Baltimore, Maryland 21231
Telephone (301) 563-0990
Attorney for Appellant

No. 85-1211

In The
Supreme Court Of The United States

October Term, 1985

Kondian R. Rajaram,

Appellant

v.

A.S. Abell Publishing Company,

Appellee

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IN THE CIRCUIT COURT FOR BALTIMORE CITY

CASE NO.: 84-135042/L20441

KONDIAN R. RAJARAM, Plaintiff v.

A.S. ABELL PUBLISHING COMPANY, Defendant

SUPPLEMENTAL AFFIDAVITS IN SUPPORT OF DEFENDANT'S MOTION TO VACATE ORDER OF AUGUST 2, 1984, AND ORDER OF DEFAULT ENTERED SEPTEMBER 11, 1984

On October 16, 1984, Defendant, A.S. ABELL PUBLISHING COMPANY (hereinafter "A.S. Abell") filed a Motion to Vacate Order of August 2, 1984, and Order of Default Entered September 11, 1984. In further support of that Motion, A.S. Abell submits the attached Affidavits of Howard K. Kurman (Exhibit F) and Jeffrey P. Ayres (Exhibit G).

WHEREFORE, based upon these Affidavits, and the materials previously submitted, A.S. Abell urges the Court to vacate the Order of Default entered September 11, 1984, and the Order of August 2, 1984.

Respectfully submitted,

/Signature/
Stanley Mazaroff

/Signature/
Jeffrey P. Ayres

VENABLE, BAETJER, AND HOWARD
1800 Mercantile Bank and Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 244-7400

Counsel for Defendant,
A.S. Abell Publishing Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of October, 1984, a copy of the foregoing Supplemental Affidavits in Support of Defendant's Motion to Vacate Order of August 2, 1984, and Order of Default Entered September 11, 1984, was mailed, certified mail, return receipt requested, to Edward J. Makowski, Esquire, 1746 Eastern KAvenue, Baltimore, Maryland 21231, Counsel for Plaintiff.

/Signature/
Jeffrey P. Ayres

AFFIDAVIT EXHIBIT F

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 17th day of October, 1984, before me, the subscriber, a Notary Public of the State of Maryland in and for the City of Baltimore, personally appeared Howard K. Kurman and made oath in due form of law as to the following matters and facts;

1. I am employed by the A.S. Abell Publishing Company ("Abell") in the capacity of Director, Labor Relations. In this capacity I am responsible for labor negotiations and labor agreement administration with various labor unions which represent Abell employees. I also serve as liason with outside counsel on labor related litigation.

2. To the best of my recollection, on May 17, 1984, Mr. Paul Bowen and Mr. John Banach, both employees of Abell, gave me copies of lawsuits which have been served upon them. These suits had been filed in the Circuit Court for Baltimore City by Kondian R. Rajaram against Mr. Bowen, Mr. Banach, and the A.S. Abell Publishing Company, among others.

3. The suits which Mr. Banach and Mr. Bowen gave to me were identical, and both had identical arbitration decisions attached to them.

4. My recollection is that after I received these suits from Mr. Bowen and Mr. Banach, I spoke to Jeffrey Ayres, Esquire, an attorney with the law firm of Venable, Baetjer and Howard. I called Mr. Ayres since he had been outside counsel on a prior case against Abell brought by Mr. Rajaram in Federal Court, which had been dismissed in October, 1983. I did not understand why the company would be involved in a second suit by Mr. Rajaram when the first suit had been dismissed in October, 1983.

5. After speaking with Mr. Ayres, I sent him a copy of one of the suits, since they appeared to be identical. This was done on May 17, 1984 under cover letter of the same date. A copy of that letter is attached to this affidavit as Exhibit A.

6. To the best of my recollection, that same day, May 17, 1984, I received suit papers from Jesse T. Crowder, Jr., Abell's Senior Vice President for Finance and its corporate resident agent. In looking at these papers, they seemed to be identical to the suit papers which had been give to me previously by Mr. Bowen and Mr. Banach. They seemed to contain the same cover page, and the same arbitration award as the Bowen and Banach papers. Assuming the Crowder papers to be duplicates of what I had already received, I did not forward them to Mr. Ayres.

7. After I spoke with Mr. Ayres on May 17, 1984, he periodically spoke to me about the progress of the case and his periodic contacts with counsel for Mr. Rajaram.

* * * *

11. I spoke with Mr. Ayres on Monday morning, October 15, 1984, and this was the first time we spoke about the letter of October 4th from Mr. Allewalt.

12. Later that same morning, Mr. Ayres phoned me and informed me that there had apparently been a Notice of Default Order dated September 14, 1984 sent to Abell relating to a law suit served on Abell May 17, 1984.

13. After speaking with Mr. Ayres, I checked my file on this case. In looking at the papers forwarded to me by Mr. Crowder, I saw on top of these papers the same suit and arbitration award which Mr. Bowen and Mr. Banach had given to me on May 17, 1984. Underneath these papers I saw a second suit which was at the bottom of the stapled papers. This second suit also had attached to it the same arbitration decision as the Banach and Bowen papers. It was apparently the suit to which Mr. Ayres had referred in our earlier conversation that morning. To the best of my recollection the first time that I saw this suit was on Monday, October 15, 1984.

* * * *

/Signature/
Howard K. Kurman, Affiant

SUBSCRIBED AND SWORN TO THE DAY AND YEAR ABOVE WRITTEN.

/Signature/
Notary Public

My Commission Expires July 1, 1986

IN THE DISTRICT COURT OF
MARYLAND FOR BALTIMORE CITY

Case No: 28643-84
Trial Date: April 16, 1985 8:45 a.m.

Melvin Perkins, Plaintiff

v.

James J. Doyle, Jr. and
Howard Kurman Defendants

MOTION TO DISMISS AND REQUEST FOR HEARING

Howard Kurman, Defendant, moves pursuant to Rule 3-311 to dismiss Plaintiff's Complaint, and in support of his Motion says:

1. Plaintiff's Complaint violates the requirements of Rule 3-303(b) that "each averment of a pleading shall be simple, concise and direct." The Complaint is illegible and, furthermore the legible portions of the Complaint are incomprehensible.

2. The Complaint violates Rule 3-305 because it does not contain a clear statement of the facts necessary to constitute a cause of

action. Defendant is unable to determine from the Complaint the nature of the case which he is required to defend.

3. To the extent that Plaintiff alleges some sort of "malpractice sute" (sic) against Defendant, Defendant states that he has never been retained by the Plaintiff as Plaintiff's attorney and therefore cannot be sued in that capacity. See Affidavit of Howard K. Kurman attached hereto as Exhibit A.

WHEREFORE, Defendant respectfully requests that the Court enter an order dismissing Plaintiff's Complaint.

/Signature/
Howard K. Kurman
501 North Calvert Street
Baltimore, Maryland 21278
(301) 332-6074

EXHIBIT A AFFIDAVIT

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 18 day of February, 1985, before me, the subscriber, a Notary Public of the State of Maryland in and for the City of Baltimore, personally appeared Howard K. Kurman and made oath in due form of law as to the following matters and facts:

1. My name is Howard K. Kurman. I am an attorney licensed to practice in the State of Maryland.

2. I have never been retained as the attorney for Melvin Perkins.

/Signature/
Howard K. Kurman, Affiant

SUBSCRIBED AND SWORN TO THE DAY AND YEAR ABOVE WRITTEN.

/Signature/
Notary Public

My Commission Expires July 1, 1986

Circuit Court
for
Baltimore City
111 NORTH CALVERT STREET
BALTIMORE, MARYLAND 21202

JOSEPH H. H. KAPLAN
ADMINISTRATIVE JUDGE

396-5080
City Deaf TTY 396-4930

November 8, 1985

Edward J. Makowski, Esq.
1746 Eastern Avenue
Baltimore, MD 21231

Re: Rajaram, et al vs. A. S. Abell
84 135 042 / L20441

Dear Mr. Makowski:

With respect to Plaintiffs' Motion To Recuse And Not To Decide Pending Or Future Motions, I have not been a member of the Baltimore law firm of Venable, Baetjer and Howard for more than eight and a half years. My pay out of my partnership interest in that firm was completed several years ago and subsequent to my having no further interest in that Firm I have not recused myself in matters wherein members

or associates of that firm appear as counsel. I will not recuse myself in this instance either. Accordingly, I will deny Plaintiffs' Motion upon presentation to me of an appropriate order.

Sincerely yours,

/Signature/
Joseph H. H. Kaplan
Administrative Judge

JHHK/kah
cc: Jeffrey P. Ayres, Esq.

LAW OFFICES
EDWARD JACK MAKOWSKI
1746 EASTERN AVENUE
BALTIMORE, MARYLAND 21231
(301) 563-0990

November 15, 1985

Honorable Judge Joseph H. H. Kaplan
Administrative Judge
Circuit Court for Baltimore City
Courthouse West -- Room 642
100 North Calvert Street
Baltimore, Maryland 21202

Re: Kondian R. Rajaram, et. al. versus A.S. Abell Publishing Company, Case No. 84 135 042 / L20441.

Your letter dated November 8, 1985.

Honorable Judge Kaplan:

Plaintiff Rajaram's Motion To Recuse is based on the fact that you have been at one time a member of the law firm of Venable, Baetjer & Howard.

He did not base, and does not intend to base, a motion on the length of time that has elapsed from the date of your leaving the membership of that law firm.

Further, he did not base, and does not intend to base, a motion on the financial side of your past membership in said law firm.

The plaintiff's desire of seeking you to recuse yourself seems to be such that he would file the same motion even if I were representing A. S. Abell and Mr. Ayres were representing plaintiff Rajaram.

Plaintiff Rajaram believes that the aftermath of past professional affinity and the urge of thankfulness for the booster offered by the past professional affinity could be permanent, and they two could supersede/dominate practically any or every other consideration including the financial.

In case the Court would like to receive a proposed order from the plaintiff, please find one attached hereto.

Thank you for your consideration in these matters.

Respectfully,

/Signature/
Edward J. Makowski
Attorney for Plaintiffs

cc: Jeffrey P. Ayres, Esq.
Clerk, Circuit Court for Baltimore City
Kondian R. Rajaram, plaintiff

Circuit Court
for
Baltimore City

111 NORTH CALVERT STREET
BALTIMORE, MARYLAND 21202

JOSEPH H.H. KAPLAN
JUDGE

396-5080
City Deaf TTY 396-4930

November 19, 1985

Edward J. Makowski, Esquire
1746 Eastern Avenue
Baltimore, MD 21231

Re: Kondian R. Rajaram, et al vs.
A. S. Abell Publishing Company
84 135 042 / L20441

Dear Mr. Makowski:

Thank you for your letter of November 15, 1985. I signed an order on November 13, 1985, denying your client's request that I recuse myself. No valid reason is set forth in your letter to me of November 15, 1985, for me to change my decision in that regard.

Accordingly, I reaffirm my refusal to recuse myself.

Sincerely yours,

/Signature/
Joseph H. H. Kaplan
Administrative Judge

JHHK/kah

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CASE NO.: 84-135042/L20441

KONDIAN R. RAJARAM, Plaintiff

v.

A.S. ABELL PUBLISHING COMPANY, Defendant

* * * * *

DEFENDANT'S MOTION TO VACATE ORDER OF AUGUST 2, 1984, AND ORDER OF DEFAULT ENTERED SEPTEMBER 11, 1984

COMES NOW Defendant, A. S. ABELL PUBLISHING COMPANY (hereinafter "A.S. Abell"), by and through counsel, and respectfully moves this honorable Court, pursuant to Rules 2-613 and 2-535 of the Maryland Rules of Procedure, for the entry of an Order vacating the Court's Order of August 2, 1984, and this Court's Order of Default entered September 11, 1984. As grounds for this Motion, A.S. Abell states as follows:

1. This Court lacked jurisdiction over this matter when the two Orders under attack here were entered. On May 14, 1984,

Plaintiff filed this lawsuit against A.S. Abell, in Case No. L20441, seeking confirmation of a labor arbitration award dated September 7, 1977, between A.S. Abell and Plaintiff's union. That cause of action, however, was removed to federal court on June 15, 1984 in Case No. L20442, which was also filed on May 14, 1984, and which completely encompasses the pleading in Case No. L20441. Since that cause of action is still in federal court, this Court had no jurisdiction to proceed when it entered the Orders in question. See 28 U.S.C. 1446(e).1/

* * * *

WHEREFORE, Defendant urges the Court to vacate the Order of Default dated September 11, 1984, and the Order of September 14, 1984. In further support of this Motion, the Court's attention is respectfully invited to the Statement of Grounds and Authorities, the Request for Hearing, and

the Proposed Order, all filed herewith.

Respectfully submitted,

/Signature/
Stanley Mazaroff

/Signature/
Jeffrey P. Ayres

VENABLE, BAETJER, AND HOWARD
1800 Mercantile Bank and Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 244-7400

Counsel for Defendant,
A.S. Abell Publishing Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October, 1984, copies of the foregoing Defendant's Motion to Vacate Order of August 2, 1984, and Order of Default Entered September 11, 1984, Statement of Grounds and Authorities in Support Thereof, Request for Hearing, and proposed Order were hand-delivered to Edward J. Makowski, Esquire, 1746 Eastern Avenue, Baltimore, Maryland 21231, Counsel for Plaintiff.

/Signature/
Jeffrey P. Ayres

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE, filed by Jeffrey Peabody Ayres, Esq., on November 19, 1984, on behalf of A.S. ABELL PUBLISHING COMPANY, in the Circuit Court for Baltimore City in Case No. 84-135042/L20441, page 13:

> "...
>
> First, Case Nos. L20441 and L20442 are virtually identical and embody a single cause of action. See, e.g., Fox v. Custis, 712 F.2d 84, 89 (4th Cir. 1983). That cause of action was removed on June 15, 1984, when removal papers were filed in Case No. L20442. Consequently, this Court was without jurisdiction over the entire cause of action (including Case No. L20441) from that juncture forward. See 28 U.S.C. §1446(e)."

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION, VACATION AND REINSTATEMENTS, filed on April 4, 1985 by Jeffrey Peabody Ayres, Esq., (and his associate Stanley Mazaroff, Esq.,) in the Circuit Court for Baltimore City, Case No. 84-135042/L20441, page 7:

> "Even though the case at bar is proceeding in State court, federal substantive law applies for two reasons. First, federal law applies because Plaintiff is seeking to confirm a labor arbitration award. ... "

Page 8:

> "7/ The Maryland Uniform Arbitration Act is expressly inapplicable to labor arbitrations like the one involved here. ... Moreover, to hold that Defendant cannot raise defenses like limitations and res judicata would violate the Supremacy Clause of the U.S. Constitution and improperly accord substantive effect to Maryland Rule E1, et seq., in contravention of the Court of Appeals rule-making powers. ..."

MEMORANDUM IN SUPPORT OF APPELLEE'S MOTION TO DISMISS APPEAL, filed on June 14, 1985 by Jeffrey Peabody Ayres, Esq., in the Court of Special Appeals of Maryland, in PHC No. 155, Sept. Term 1985, page 3:

> "3/ Mr. Rajaram's 1984 lawsuit to confirm and enforce a 1977 labor arbitration award is barred by a six month federal statute of limitations. ..."